

United States District Court

Western District of Texas

Pecos Division

United States

v.

Thomas Arthur

No. P-19-CR-774-DC

Defendant's Third Motion in Limine
Regarding Non-Testifying Experts

Judge Counts:

Please order the Government not to refer or allude in trial to either of Mr. Arthur's non-testifying consulting experts.

In the ordinary course of things, the Government never hears about the Defense's non-testifying consulting experts. In this case, because the allegedly obscene works in this case were made available only at the Government's offices, Mr. Arthur's consulting experts had to review the works there, which gave the Government information about Mr. Arthur's trial preparation to which it was not entitled under the rules.

To prevent Mr. Arthur from being prejudiced by this process, the Magistrate Judge entered a protective order (No. 33) "prohibiting the Government from contacting any consulting experts, in any way, that may appear to examine the material on behalf of the Defendant."

Mr. Arthur had two consulting experts who are not testifying. The Government has referred in its *Motion for Reconsideration* (No. 90) to

things that these consulting experts told the Government when they went to the FBI's offices to review the evidence.

Mr. Arthur is not accusing the Government of violating the protective order. The consulting expert may have volunteered information to the Government without any prompting whatsoever. That doesn't matter.

What matters is that the Government's use of this information, which it would not have but for the extraordinary discovery procedure in this case, would violate the spirit of the Magistrate Judge's protective order by working a fundamental unfairness. Mr. Arthur should have been able to rely on the protective order to keep even the fact of his nontestifying experts' review of the evidence out of evidence in this case. Due process requires that an accused be able to prepare for trial out of the view of the Government, and where trial preparations must be conducted in the view of the Government, due process requires that those preparations not be used by the Government against the accused.

For that reason, please order the Government not to refer or allude to either of Mr. Arthur's non-testifying consulting experts.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of this document will be delivered to the attorneys for the Government by the efile system when it is filed with this Court.



Mark Bennett